



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, LRE

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on June 4, 2022 seeking an order to cancel the Two Month Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”).

The Tenant filed a second Application on July 24, 2022 to dispute the 10-Day Notice to End Tenancy for Unpaid Rent (the “10-Day Notice”), and to restrict the Landlord’s right to enter the rental unit.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on October 17, 2022. Both parties attended the conference call hearing. At the outset, I reviewed disclosure of evidence that either side provided in advance. On the basis that both parties received relevant disclosure from the other, I proceeded with the hearing.

Preliminary Matter – 10-Day Notice

With their Application to dispute the 10-Day Notice, the Tenant provided evidence that they paid the rent within five of receiving it from the Landlord on July 21, 2022. That rent receipt was dated July 25, 2022 for that month’s full rent amount. In the hearing the Landlord agreed that the July rent was paid.

With the parties’ agreement, I consider the 10-Day Notice cancelled and of no effect. The tenancy will not end by reason of the 10-Day Notice.

Preliminary Matter – unrelated claim

The *Residential Tenancy Branch Rules of Procedure* permit an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes ‘related issues’, and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on any of the notices to end tenancy issued by the Landlord.

In line with this, I dismiss the Tenant’s Application for a restriction or suspension on the Landlord’s right to enter the rental unit request for monetary compensation, with leave to re-apply.

Issues to be Decided

Is the Tenant entitled to a cancellation of the Two Month Notice?

Should the Tenant be unsuccessful in seeking to cancel the Two Month Notice, is the Landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Background and Evidence

The Tenant submitted images of pages from the tenancy agreement. This shows the start of the tenancy agreement in 2005, with the rent amount at \$400. The rent increased over the years to \$645.

The Landlord issued the Two-Month Notice to the Tenant on May 25, 2022. The Tenant confirmed they received this document in person. This provided no move-out end-of tenancy date as required. The second page of the document shows the landlord’s indication that they will occupy the rental unit; however, the Landlord did not indicate precisely which family member will occupy the rental unit.

In the hearing, the Landlord summed up the situation to say they no longer wish to take on the duties associated with being a landlord. In effect, this represents a retirement for them.

The Tenant responded and provided various reasons why they feel the Landlord is not issuing the Two-Month Notice in good faith. These focused on the Landlord re-renting the unit for a higher rent of rate, much higher than what the Tenant pays currently which they agreed was much lower than the market rate.

Analysis

The *Act* s. 55 states, in part:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if:
- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy, and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The *Act* s. 52 states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) . . . state the grounds for ending the tenancy,
 . . . and
 - (e) when given by a landlord, be in the approved form.

In this hearing, the Tenant submitted a copy of the Two-Month Notice. The copy does not include an effective end-of-tenancy date. The space for the move-out date for the Tenant is left blank. The Landlord also submitted a copy of the Two-Month Notice, which bears different handwriting, and does provide an end-of-tenancy date. The Landlord's copy was in their evidence they provided in response to the Tenant's Application.

Given that the Tenant provided a photo of the document that was served to them, including a staple in the top left-hand corner, I find it more likely than not that the copy they received was not complete as required by s. 52. The Tenant's copy bears not end-of-tenancy move-out date.

The onus is on the Landlord to prove the document they served was complete as required by s. 52. The Tenant provided evidence that outweighs that of the Landlord on this point. I find the document did not state the effective date of the notice, and that is a strict requirement of s. 52.

Because the document does not meet the requirements of s. 52, the condition of s. 55(a) was not met here by the Landlord.

For these reasons, I order the Two Month Notice is cancelled. I find the Two-Month Notice, allegedly issued by the Landlord on May 25, 2022 does not comply with the requirement set out in s. 52(c). Additionally, neither copy specifies precisely which close family member will occupy the rental unit.

Conclusion

For the reasons above, I order that the Two-Month Notice issued by the Landlord on June 26, 20May 25, 2022²¹ is cancelled. The tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: October 17, 2022

Residential Tenancy Branch